

DELAWARE'S COASTAL ZONE CONVERSION PERMIT ACT

Background and Changes Resulting from the Coastal Zone Conversion Permit Act



Coastal Zone Act Background

- Title 7 Chapter 70 of the Delaware Code
- Passed in 1971, under Gov. Russell Peterson, in response to industrial development pressure in Delaware Bay region
- Established the boundaries of Delaware's "Coastal Zone"



Delaware's “Coastal Zone”

Fully specified in the Coastal Zone Act

“Quick and Dirty” Description

- East of I-495 around Wilmington
- East of Routes 9 and 1 from Wilmington to Rehoboth
- East of Routes 24 and 20 from Rehoboth to Fenwick
- Includes some areas north and south of C&D Canal



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- Established the boundaries of Delaware's "Coastal Zone"
- Aimed to "strike the correct balance between" the policies of introducing new industry to Delaware and protecting the state's environment, natural beauty, and recreation potential



Statutory Mandates for the Coastal Zone

- Prohibited:
 - *New* bulk product transfer facilities
 - *New* heavy industry uses
- Allowed:
 - *Expansion of existing* heavy industry uses by permit
 - *New and expanded* manufacturing uses by permit
- No restrictions on commercial or residential development
- DNREC to make permit decisions by considering:
 - Environmental impacts
 - Economic effects
 - Aesthetic effects
 - Impact of supporting facilities
 - Effect on neighboring land uses
 - County and municipal comprehensive plans

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Definition: Bulk Product Transfer Facility

- Any port or dock facility for transfer of bulk quantities of any substance from:
 - Vessel to shore
 - Shore to vessel
 - Vessel to vessel
- Includes: Unincorporated, loose materials (such as liquids, sand, gravel, grain)
- Excludes:
 - Containers or palletized items
 - Dock facilities/piers for permitted single industrial/manufacturing use
 - Dock facilities for Port of Wilmington



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Definition: Heavy Industry Use

- Use occurs on > 20 acres
- Contains characteristic equipment like (but not limited to) smokestacks, tanks, distillation columns, chemical processing equipment, etc.
- Can potentially pollute when equipment malfunctions or human error occurs
- Examples:
 - Oil refineries
 - Steel manufacturing,
 - Petrochemical complexes
 - Cellulosic pulp-paper mills



Delaware City Refining Company LLC, Delaware City, DE

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Definition: Manufacturing



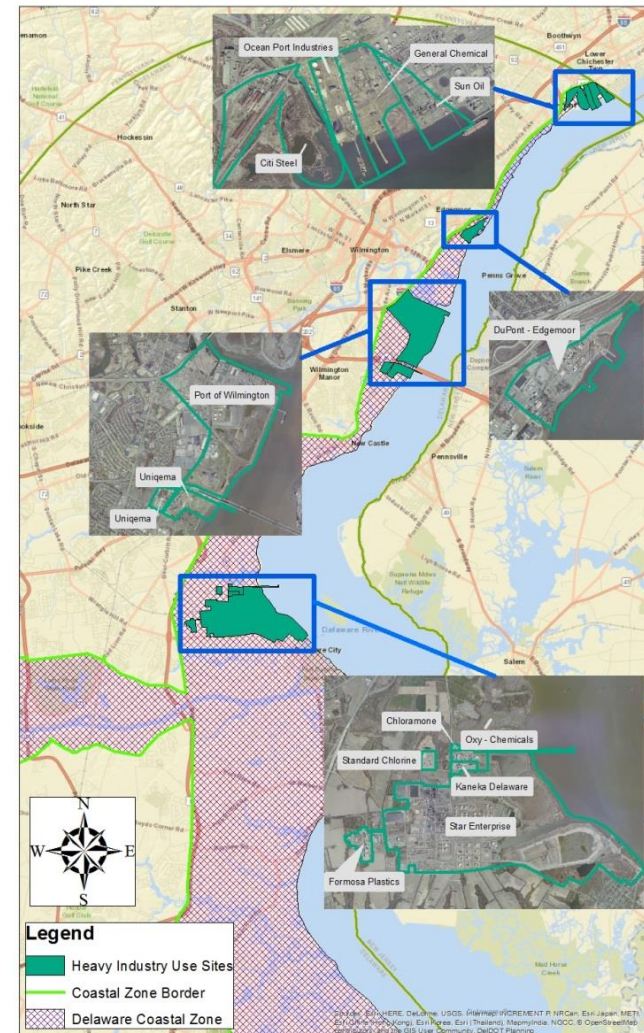
Office of Senator Chris Coons

- Mechanical or chemical transformation of organic or inorganic substances into new products
- Contains characteristic equipment like power-driven machines and materials-handling equipment
- Examples:
 - Recycling plant
 - Garment factories
 - Assembly plants

Coastal Zone Conversion Permit Act

- Signed by Delaware General Assembly in August 2017
- Allows expanded uses on 14 *existing* heavy industry use sites
- Expanded use on any of these 14 heavy industry use sites requires a “conversion permit” from DNREC
- DNREC is mandated with developing “conversion permit” regulations by October 1, 2019

Heavy Industry Use Sites in New Castle County



Expanded Uses on the 14 Sites

Allowable

- **Alternative heavy industry use**
- **Additional heavy industry use** that will operate simultaneously with an *existing* heavy industry use on the site
- **Bulk product transfer facility** that may be operated simultaneously with an *existing* heavy industry or manufacturing use on the site

NOT Allowable

- Oil refineries
- Cellulosic pulp-paper mills
- Incinerators
- Steel manufacturing plants
- Liquefied natural gas terminals



Demolition at the Former Citi Steel site, Oct 2017

Bulk Product Transfer Facility Stipulations

- Must have had docking facility on or before June 28, 1971
- Facility must be used to either (or both):
 - Receive shipments (i.e., import) of bulk products necessary for and fully utilized in operation of one or more facilities in coastal zone
 - Ship (i.e., export) bulk products produced by one or more facilities in the coastal zone
- Two exceptions for bulk product transfer facilities:
 - Grain can be transferred without regard to origin or destination
 - Bulk transfer of liquefied natural gas is not permissible



Considerations for Both Coastal Zone Permit Types

	Manufacturing or Expansion of Existing Heavy Industry Use	Additional or Alternative Heavy Industry Use	Bulk Product Transfer Facility
Type of permit required	Standard permit	Conversion permit	
More than offset negative environmental impacts (including emissions)	✓	✓ (Annually)	✓ (Annually)
Account for economic effects	✓	✓	✓
Account for effects on neighboring land uses	✓	✓	✓
Prepare for potential impacts of sea level rise and coastal storms		✓	✓
Provide evidence of financial assurances		✓	✓
Agree to pay for cost of compliance for on-site hazardous substance cleanup (if applicable)		✓	✓

Current Regulations Governing the Coastal Zone

- Established in 1999 as the “Regulations Governing Delaware’s Coastal Zone”
- Clarifies prohibited uses, allowable uses, and uses requiring standard coastal zone permits
- Outlines permitting procedures for standard coastal zone permits, including:
 - Application contents
 - Review process and permit fees
 - Public notice and hearing requirements



DE Storage and Pipeline Site, Port Mahon Road, Kent County

Conversion Permit Regulations

- The Coastal Zone Conversion Permit Act directed DNREC to promulgate regulations for conversion permits by October 1, 2019
- The “Regulations Governing Delaware’s Coastal Zone” will be amended to incorporate Conversion Permits
- Requires amending certain sections and drafting new sections but *only* those pertinent to conversion permits
- Developers can submit conversion permit applications prior to promulgation of amended regulations. Should this occur, DNREC will assess any such applications using the requirements outlined in the Coastal Zone Conversion Permit Act.

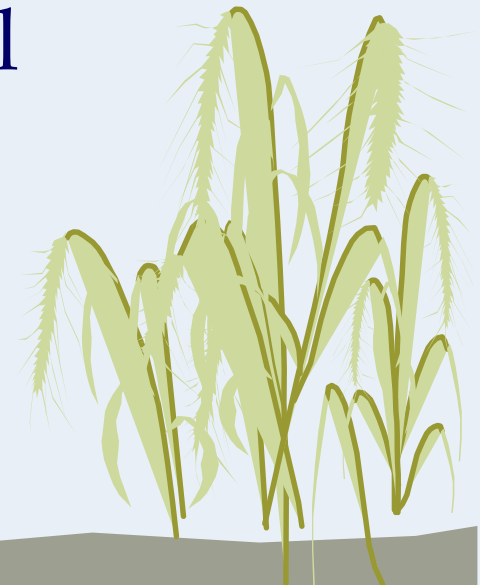
Delaware Coastal Zone Conversion Permit Act Regulatory Advisory Committee

June 14, 2018

Delaware City, Delaware

Ralph K. (“Dirk”) Durstein III

Deputy Attorney General



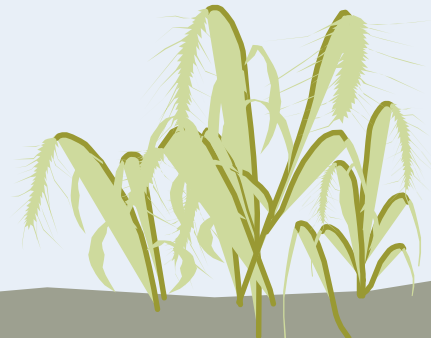
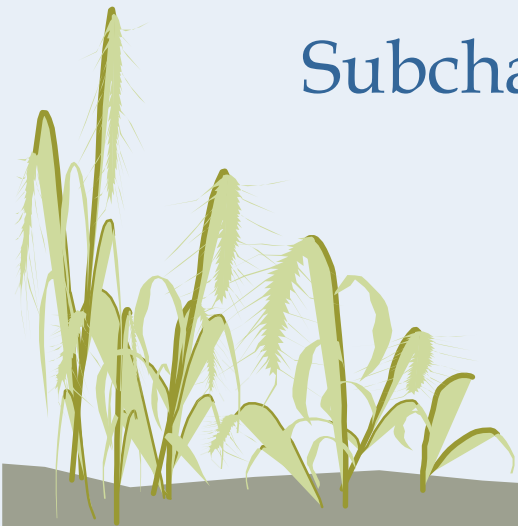
Section 9 of H.B. 190

The Department of Natural Resources and Environmental Control is encouraged to start the public workshop process to promulgate revised regulations consistent with this bill no later than October 1, 2017 and work towards final promulgation of the revised regulations by October 1, 2019.



Civics 101 (“Sources of Authority”):

- Delaware Constitution, Article II
- Title 7 Delaware Code: §6010
- Coastal Zone Act: §7005(b), §7014(c)
- Administrative Procedures Act, Title 29
Delaware Code, Chapter 101,
Subchapter II, Agency Regulations



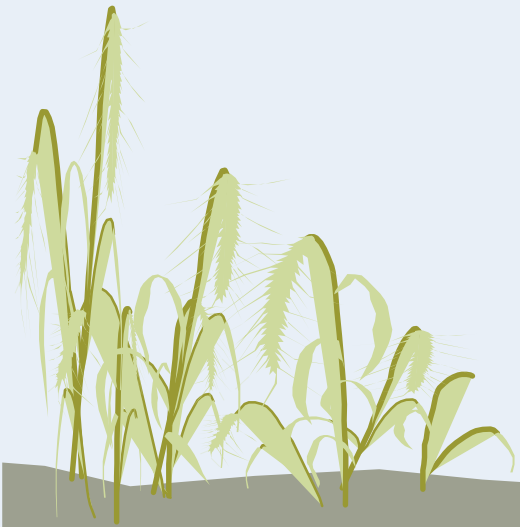
How does a regulation differ from a statute?

- Adopted by the Executive Branch
- Subject to administrative enforcement
- Must be Constitutional (State and Federal)
- Must be within statutory authority
- Must be adopted per statutory process



Essential components of Regulations:

- What (scope of the regulation)?
- Who (to whom does it apply)?
- Where (locations, sites)?
- How (process for approval)?
- When (deadlines)?



Why Regulations?

- Forms (e.g. conversion application)
- Criteria (e.g. “environmental impact and economic effect”)
- Metrics (e.g. “net environmental or economic improvement”)
- Plan (e.g. sea level rise and coastal storms)
- Mandates (e.g. offset proposals)
- Compliance (e.g. HSCA)
- Documentation (e.g. financial assurance)



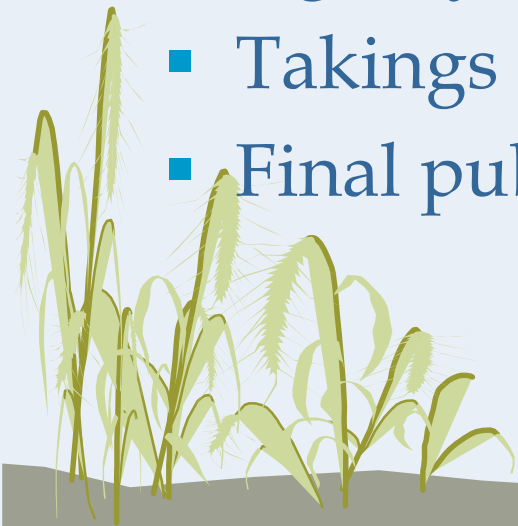
Public Input and Transparency

- All RAC meetings are open to the public
- RAC materials published online
- Public comment at each meeting
- Outreach to “fenceline” communities
- Public workshops to solicit input
- Involvement of stakeholders
- Publication of RAC recommendations



How are regulations adopted?

- Publication in *Register of Regulations*
- Full text of proposed amendments
- Regulatory Flexibility Act compliance
- Notice of hearing and comment period
- Review by agency of record
- Agency findings and final text
- Takings analysis by Attorney General
- Final publication with effective date



Regulatory Flexibility Act

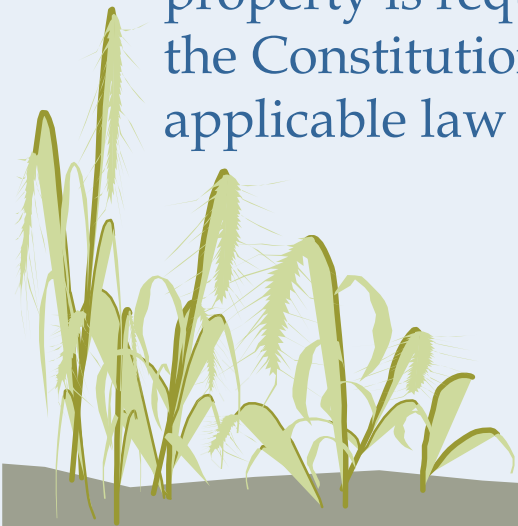
- Any agency proposing a regulation likely to impose additional burdens on an individual or small business must submit a **Regulatory Impact Statement**. 29 *Del.C.* §10404A(a).
- The agency must also submit a **Regulatory Flexibility Analysis**, considering ways to reduce burdens and costs on individuals and small businesses. 29 *Del.C.* §10404B(a).



Takings Review:

“No rule or regulation promulgated by any state agency shall become effective until the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing as to the potential of the rule or regulation to result in a taking of private property.” 29 *Del.C.* §605(a)

A “taking of private property” means “an activity wherein private property is taken such that compensation to the owner of that property is required by the Fifth and Fourteenth Amendments to the Constitution of the United States or any other similar or applicable law of this State.” 29 *Del.C.* §605(c)



What are the roles?

- Regulatory Advisory Committee
- DNREC staff and Secretary
- Attorney General
- Coastal Zone Industrial Control Board



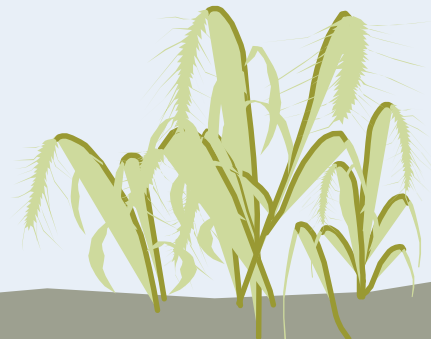
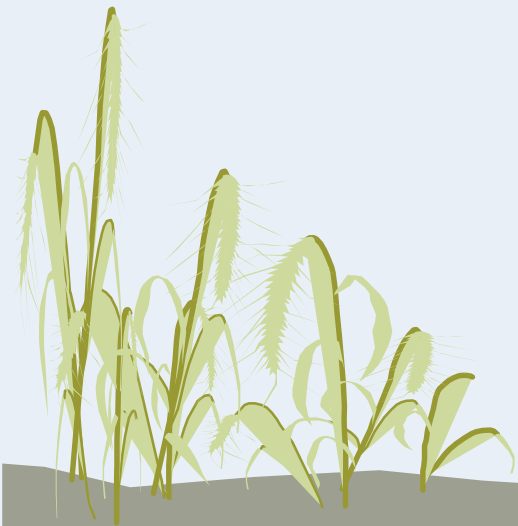
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DELAWARE'S COASTAL ZONE ACT

Overview of the Permitting Process



Current Regulations Governing Delaware's Coastal Zone

- Promulgated in 1999
- Provides additional definitions of terms
- Describes prohibited uses, allowable uses and uses requiring permits
- Outlines permitting procedures
 - Application contents
 - Permit review process and permit fees
 - Public notice and hearing requirements
 - Appeals



CZA Permit Basics

- “Standard” CZA Permit Required for:
 - Any new activity... by an existing heavy industry or new/existing manufacturing facility that may result in any negative impact...”
 - Construction of pipelines or docking facilities
 - Recycling or sewage plants, in certain circumstances



DE Storage and Pipeline Site, Port Mahon Road, Kent County

Status Decisions

- Special process to determine whether a proposed activity is a heavy industry or would require a permit under the CZA



Demolition at the Former Citi Steel site, Oct 2017

Status Decision Potential Outcomes

- CZA permit is not required
 - Project is specifically exempt
- CZA permit is required
 - Meets definition of manufacturing or expansion of existing use
- Project is prohibited
- *Project is allowable with a CZA Conversion Permit*

Status Decision Process

- Application Contents
 - Project description
 - Analysis of
 - environmental impact
 - economic effect
 - aesthetic effect
 - Supporting facilities
 - Effect on neighboring land uses
- Process
 - Legal notice
 - 10 day public comment
 - Legal opinion from DOJ
 - Decision within 25 days of legal notice

Recent Status Decisions (2017 & 2018)

- Linde, LLC
 - Replace existing equipment
 - No permit required
- Drawbridge Claymont, LLC
 - Construct new rail yard
 - No permit required
- Croda, Inc.
 - Replace and upgrade equipment
 - No permit required



Components of a CZA Permit Application

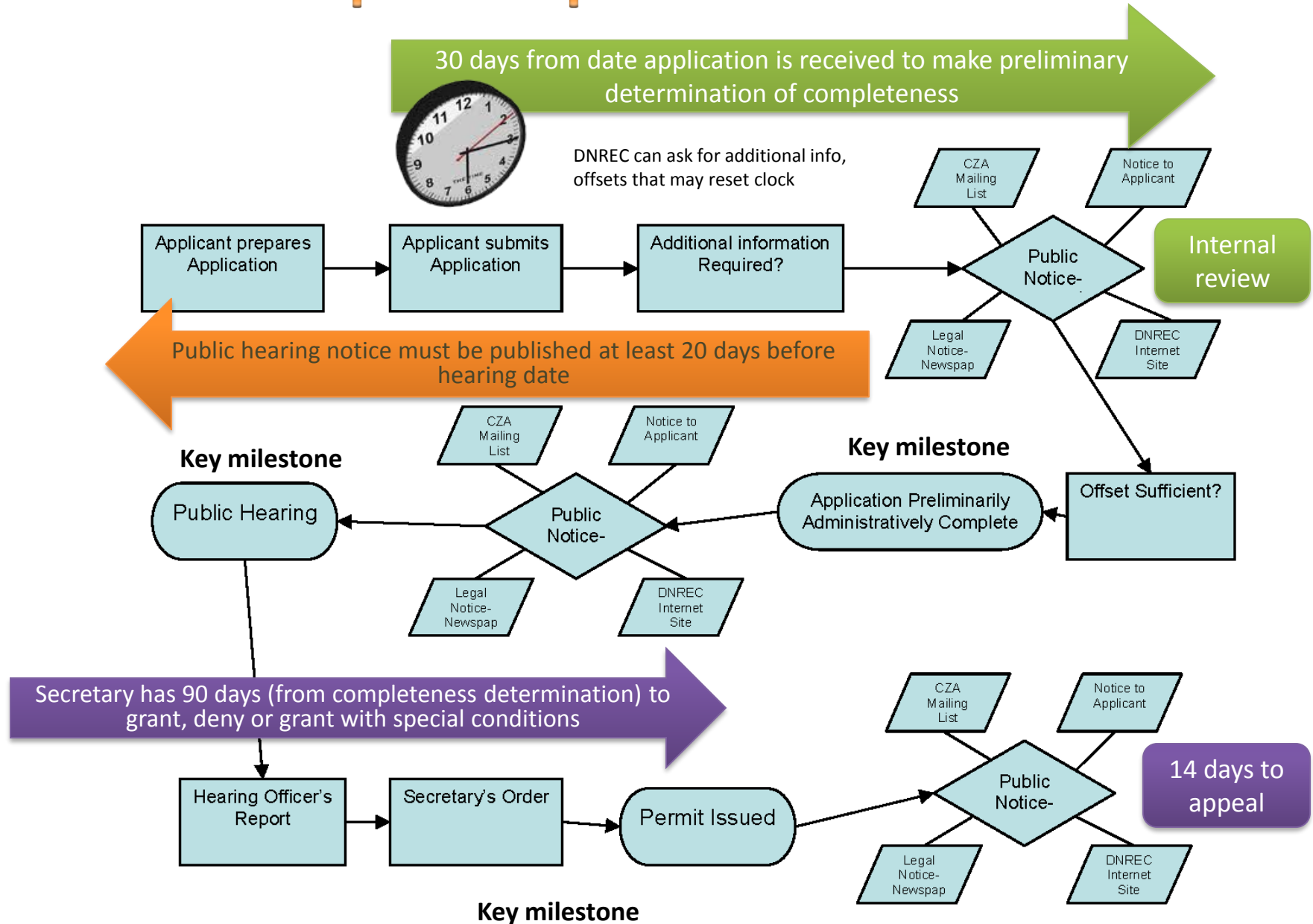
- Project and Site Info
- Environment Impacts
 - Air and Water Quality
 - Solid and Hazardous Waste
 - Habitat Protection
- Economic Effect
- Supporting Facilities Requirements
- Aesthetic Effects
- Effects on Neighboring Land Uses
- Offset Proposal



Coastal Zone Permit Process

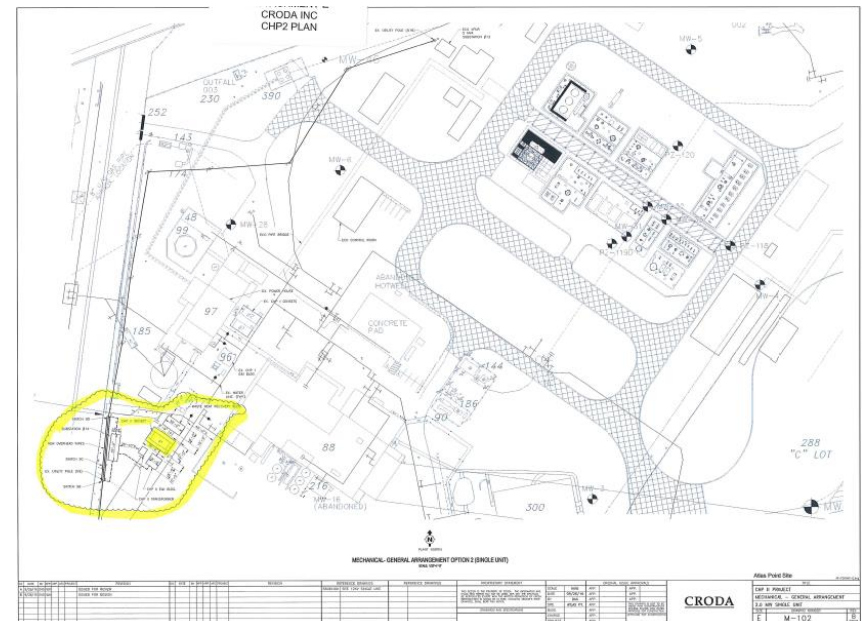
- Pre-application meetings and discussions
 - *can take months to years
- Application and offset review and requests for additional information
- Public Hearing
- Review of public comment
- Secretary's decision
- Three legal notices
 - Receipt
 - Hearing
 - Decision
- Appeals to the Coastal Zone Industrial Control Board

Coastal Zone permit process



Recent Permit Applications (2017 & 2018)

- Essential Minerals
 - New limestone processing facility
- Croda
 - Installation of combined heat and power system
- Mountaire Farms
 - Expansion of manufacturing line
 - *withdrawn



The Offset Requirement

- Any negative environmental impact of a project must be offset
- Offset proposals must more than offset the negative environmental impacts
- Applicant must demonstrate that its benefits outweigh the negative impacts of the permitted activity
- Responsibility for identifying an offset project lies with the applicant.
 - DNREC provides assistance when possible

Meeting the Offset Requirement

- Ratio of 1.3 to 1 for emissions impacts
 - 1 ton pollutant emitted would require 1.3 ton offset
- Preference for “in-kind”
- Preference for on-site or local offset projects
- Flexibility for applicants
- Can conduct a project or buy emissions credits

Questions?

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Milestones and Deadlines

STATUTORY DEADLINE

- o ***Regulations promulgated by October 1, 2019***

TARGETS

- o Public Workshops (informational) – ***October/November 2018***
- o Work Groups wrap up – ***December 2018***
- o Public Workshops (draft recommendations) – ***February 2019***
- o Final RAC recommendations – ***March 2019***
- o DNREC Initial Proposed Regulations – ***April 2019***

Community and Public Engagement Goals

- ▶ To help communities near the 14 sites become aware of the development of the Conversion Permit program;
- ▶ To engage communities by learning of their interests and concerns regarding potential development at these sites; and
- ▶ To gather input from these communities to inform both the RAC and DNREC in the regulatory development process



Discussion Questions

- ▶ How do we best interact with formal community organizations?
- ▶ How do we engage less organized communities?
- ▶ Aside from in-person meetings, what are the best ways to gather input from community groups and members?

